APPENDIX

February 13, 1942.

Honorable George E. Bushnell,
Dime Bank Building,
Detroit, Michigan.

Dear Judge Bushnell:

There are several inaccuracies in your opinion in *City of Highland Park v. Clark,* which you might wish to correct before the opinion becomes official.

1. The quotation from the opinion in *Village of Oak Park v. Van Wagoner,* reading "The acts of the drain commissioner were without warrant in law," etc., which the opinion says was unanimously concurred in, does not appear in the majority opinion appearing at the bottom of page 459 of 271 Mich., but is part of the Circuit Judge's opinion approved by the minority.

2. At the end of the paragraph in which *Thompson v. Mecosta* is considered, the opinion says: "Judgment, however, for plaintiff was reversed and one entered for the Village because of the absence of proof of *bona fides.*" The opinion in the case, 127 Mich. 522, 530, shows that a new trial was ordered. By reason of the fact that the original taker of the bonds participated in the fraud, it was incumbent on plaintiff to show good faith. The court was of the opinion that the evidence on this subject should be taken and ordered a new trial for that purpose. The erroneous statement in regard to this case might carry the inference that you considered the decision on the main point obiter.

3. I wonder whether it was understood that the amendments to the drain code included in Act 365, Public Acts 1925, and Act 331, Public Acts 1927, were applicable. The second paragraph of your opinion only mentions Act 316, Public Acts 1923. One sentence of this paragraph says, "This act has been since amended (Act No. 318, Public Acts 1929 and others) and now includes provision for the building of sewers and *sewage facilities.*" I have underscored sewage facilities because the provision for building a sewage disposal plant was in the 1925 amendment, and applicable to these proceedings. Thus there was in the law at the time some provision for sewage facilities.

Very truly yours,

IL:GLD (Signed) Irvin Long.

February 17, 1942.

Mr. Hiram C. Bond,
Supreme Court,
Lansing, Michigan.

Dear Mr. Bond:

In re City of Highland Park v. Clark
(Mot. 23, Oct. Term 1941)

I enclose a letter received from Mr. Irvin Long of Detroit.

I do not agree with the view he expresses in paragraph 1 because, as I read the opinion from which he quoted, the court did unanimously agree with the quoted statement. He is not correct in his observation in paragraph 2 and I would like to have the opinion corrected by the

substituted of some words in the sentence which Mr. Long quotes so that it will read:

> "Judgment, however, for plaintiff was reversed and a new trial ordered because of the absence of proofs of *bona fides.*"

This will require the deletion of the words "one entered for the village."

I do not share his apprehension as expressed in paragraph 3 of his letter, but for the sake of clarity it might be wise to delete the word "now" from the quoted sentence.

I am sending a copy of this letter to Mr. Long so that he may see what action has been taken.

I assume you will secure the permission of the other members of the court in order to authorize these changes.

Sincerely yours,

(Signed) George E. Bushnell.

February 18, 1942.

Mr. Jay Mertz,
Clerk of Supreme Court,
Lansing, Michigan.

Dear Jay:

Re: City of Highland Park v. Clark
Motion 23, October Term

I have been having some difficulty in interpreting the two opinions in the above case, and asked Judge Fead if he could help me.

What I want to know is whether the entire court agreed with all Justice Bushnell said in his opinion, and merely

thought it should be amplified by the opinion of Justice Boyles, or whether Justice Bushnell's opinion represents views held independently. Judge Fead was also in doubt. I believe he had some conversation with Justice Bushnell which gave him the impression that both opinions represent the views of the court. Judge Fead suggested that I write you, asking that you look at the opinions as filed and signed, and advise whether Justice Bushnell's opinion is also signed by other members of the court. All that appears on the copies sent me is, first, Bushnell's opinion, then Boyles' opinion, followed by

> "Chandler, C. J. and North, Starr, Weist, Butzel and Sharpe, J.J. concurred with Boyles, J.
> "Bushnell, J. I agree with the amplification as stated by Mr. Justice Boyles."

The use of the term "amplification" puzzles us, because it implies merely an addition of something left unsaid in the first opinion.

Would you be so good as to look at the original on file and see whether by any chance the copy omitted signatures of other judges to Bushnell's opinion.

Very truly yours,

IL:GLD (Signed) Irvin Long.

All the Justices signed Justice Bushnell's opinion. Judge Boyles' opinion was signed as above.

(Signed) J. M.